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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MALIBU MEDIA, LLC,

Plaintiff,

v.

Case No. 3:15-cv-04269-FLW-LHG

[REDACTED],

Defendant.

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**PLAINTIFF’S, MALIBU MEDIA LLC, NOTICE OF MOTION FOR MOTION TO  
STRIKE DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES**

Plaintiff, Malibu Media, LLC (“Plaintiff”), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 12 and Local Rule 7.1, hereby moves for the entry of an order striking or summarily dismissing impertinent, immaterial, and scandalous references to Plaintiff as a “copyright troll” and the First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Affirmative Defenses, filed by Defendant, [REDACTED] (“Defendant”) and files this Notice of Motion:

1. A court has broad discretion in considering a motion to strike under Fed. R. Civ. P. 12(f). Rule 12(f) states that a court may order stricken from any pleading any

insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. *See*, Fed. R. Civ. P. 12(f). A defense will be stricken if it is insufficient as a matter of law. *Id.*

2. Defendant's reference to Plaintiff as "Copyright Troll" in ¶¶8, 17, 19, 21, 23, 24, 25, 26, 28, 29, 31, 32, 33, and 34 of Defendant's Answer. Further, Plaintiff's improper argument in ¶8 is impertinent, immaterial, and scandalous, and meant to harass and embarrass Plaintiff. Plaintiff will be prejudiced by these statements and therefore Plaintiff requests that ¶8 of Defendant's Answer be stricken in its entirety, and that all subsequent references to Plaintiff as "copyright troll" in ¶¶17, 19, 21, 23, 24, 25, 26, 28, 29, 31, 32, 33, and 34 of Defendant's Answer also be stricken.

3. The First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Affirmative Defenses filed in Defendant's Answer are unsupported, wholly conclusory and has not given plaintiff "fair notice of the nature of the defense." *Vazquez v. Triad Media Sols., Inc.*, No. 15-cv-07220 (WHW)(CLW), 2016 U.S. Dist. LEXIS 3912, at \*7-8 (D.N.J. Jan. 13, 2016).

4. While an affirmative defense "does not need to meet the *Iqbal/Twombly* plausibility standard, the pleading must still give plaintiffs 'fair notice' of the defense." *Id.*

5. Courts have held that "fair notice requires more than a mere rote recitation of generally available affirmative defenses without citation to any other fact or premise from which an inference may arise that the stated defense is logically related to the case in any way." *Id.*

6. Based Defendant's unsupported, and conclusory Affirmative Defenses, Plaintiff has no way of knowing how Defendant may challenge the complaint on the basis of those affirmative defenses stated ¶¶1-34.

7. Because Plaintiff would be prejudiced by having to respond without fair notice of the nature of the defense, the Court should strike Defendant's 1<sup>st</sup> through 12th Affirmative Defenses.

8. A brief in support of this motion and proposed order are filed contemporaneously herewith.

9. Pursuant to Local Rule 7.1, this motion is made returnable before Honorable Judge Claire C. Cecchi on the motion day February 5, 2018.

10. Plaintiff does not request oral argument.

**WHEREFORE**, Plaintiff, Malibu Media, LLC, respectfully requests entry of an order:

- (A) Striking ¶8 of Defendant's Answer in its entirety;
- (B) Striking all subsequent references to Plaintiff as "copyright troll" in ¶¶17, 19, 21, 23, 24, 25, 26, 28, 29, 31, 32, 33, and 34 of Defendant's Answer;
- (C) Granting Plaintiff's Motion to Strike or Summarily Dismiss Defendant's First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Affirmative Defenses;
- (D) Striking or summarily dismissing Defendant's First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Affirmative Defenses; and,
- (E) Granting Plaintiff such other and further relief as this Court deems just and proper.

Dated: January 2, 2018

Respectfully submitted,

By: /s/ Patrick J. Cerillo  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 2, 2018, I electronically filed the foregoing document with the Clerk of the Court and all parties using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

By: /s/ Patrick J. Cerillo  
Patrick J. Cerillo, Esq.